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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,895	11/26/2003	Alfred Niederberger	8932-803-999	6293
51832	7590	11/29/2005		
JONES DAY 222 EAST 41ST STREET NEW YORK, NY 10017-6702			EXAMINER ARAJ, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 11/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/721,895

Applicant(s)

NIEDERBERGER ET AL.

Examiner

Michael J. Araj

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/26/2004</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the double threaded screw hole must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "double threaded" in claims 5 and 34 is a relative term which renders the claim indefinite. The term "double threaded" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. This term can be interpreted in many different ways with no further explanation given in the specification, leaving the claims indefinite.

***Claim Rejections - 35 USC § 102***

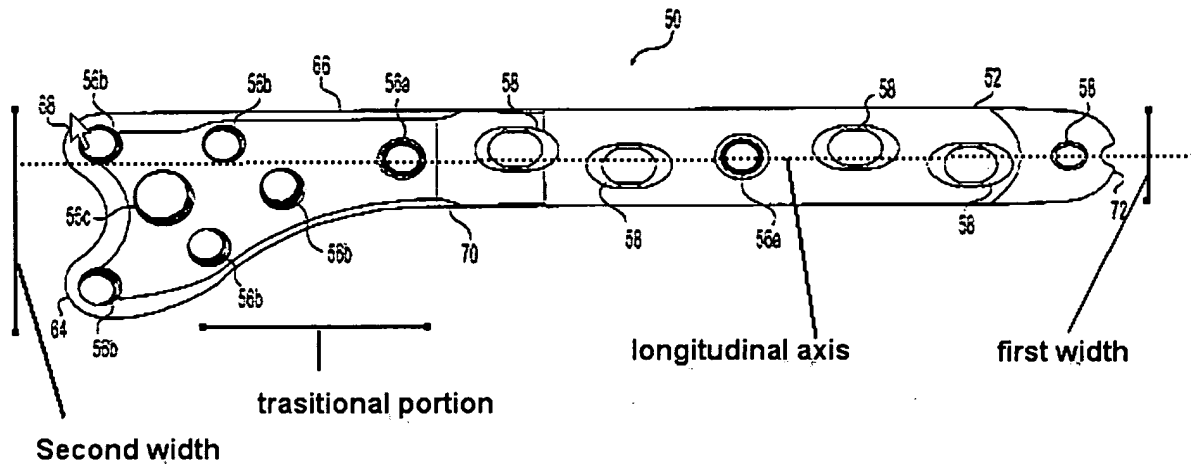
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 6, 7, 10-12, 18, 19, 21-25, 28, 29, 32, 36 and 39, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Weaver et al. (U.S. Patent No. 6,623,486).

Weaver et al. disclose a bone plate (50) comprising an elongated shaft portion having a first width, a head portion connected to the shaft portion having a greater width along a common longitudinal axis, at least one partially threaded screw hole (56) located in the head and shaft portion where in at least one of said screw holes are configured to engage a head of a bone screw to form an angularly stable connection with the bone screw (see Figure below). The first and second screw holes include at least a partial peripheral groove (58) for engaging a head of a bone screw that is substantially wedged shaped. Weaver et al. also disclose a third width that widens exponentially, the shaft portion being curved in the form of an elliptical arc along the longitudinal axis, and the shaft portion lying in a first plane that is substantially parallel to the head portion lying in a second plane (see Figure 8). At least one portion of the bone plate has a curvature that runs transversely to the longitudinal axis, where the curvature substantially runs over the entire length of the bone plate. The bone plate has an upper surface and a lower surface where the first and second pair of holes are divided by a longitudinal axis causing one pair to be symmetric and the other being asymmetric. The head portion is connected to the shaft portion at a transition portion where one first pair of the first holes is located farther from the transition portion than the second pair of the first holes, and where at least one of the second holes defines a central axis that is substantially perpendicular to the longitudinal axis.



### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 8, 9, 13-17, 20, 26, 27, 30, 31, 33, 35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. (U.S. Patent No. 6,623,486).

Weaver et al. disclose the claimed invention except the range of the thread pitch, plate thickness, elliptical arc with a major and minor axis, curvature of radius, acute angles and obtuse angles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the bone plate of Weaver et al. having the ranges as set forth in the disclosed claim, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 5 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. (U.S. Patent No. 6,623,486) in view of Schafer et al. (U.S. Patent No. 6,572,622).

Weaver et al. disclose the claimed invention except for the plate having screw holes that are double threaded. Shafer et al. teaches a serrated or threaded edge (32) on two portions of the aperture (the flat flank (34) and the steep flank (36)) producing a double threaded screw hole. It would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Weaver et al. with a double threaded screw hole in view of Schafer et al., for facilitating screwing in the bone screw and prevent automatic unscrewing (Col. 3, lines 6-11).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MJA

  
EDUARDO C. ROBERT  
PRIMARY EXAMINER